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**THIRTEENTH CONGRESS OF
THE REPUBLIC OF THE PHILIPPINES
Second Regular Session**

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SENATE

S. No. 2080

**INTRODUCED BY SENATORS MAR ROXAS, RODOLFO G. BIAZON,
MIRIAM DEFENSOR SANTIAGO, FRANKLIN M. DRILON, JINGGOY
EJERCITO ESTRADA, LUISA "LOI" P. EJERCITO ESTRADA, JUAN PONCE
ENRILE, RICHARD J. GORDON, MANUEL M. LAPID, RAMON B.
MAGSAYSAY, JR., AND RAMON "BONG" REVILLA, JR.**

EXPLANATORY NOTE

This bill seeks to amend Republic Act No. 9337, by exempting the generation, transmission, distribution and supply of power from the coverage of the new VAT law and deleting the limit on creditable input VAT.

R.A. No. 9337 was passed for the purpose of raising the necessary revenues to remedy the ailing fiscal position of our country. One of the significant measures of the law was to impose VAT on power by removing its zero-rating under Section 6, fifth paragraph of R.A. 9136 (the EPIRA Law), and lifting the VAT exemption of the National Power Corporation under Section 13 of R.A. 6395 as well as that of the electric cooperatives under Section 109(S) of the National Internal Revenue Code of 1997. To cushion the effect on power, the franchise tax on electric utilities was abolished.

VAT on power is expected to raise the government's annual revenue by ₱8.85 billion starting 2006, comprising of ₱7.62 billion from VAT on power and ₱1.23 billion from lifting of exemption of electric cooperatives. This is 7% of the total additional expected revenue of ₱123.62 billion a year from the new VAT law.

As it stands, the Philippines already has one of the highest cost of power among the countries in the South East Asian region. With the additional 10% VAT, however, MERALCO reports that end-consumers will have to pay an additional 80.56 centavos per kilowatt-hour (kWh), even after the 2% national franchise tax was already removed. Thus, for households consuming 200 kWh of electricity a month, the VAT is estimated at ₱167.49, a quite substantial amount for working class Filipinos.

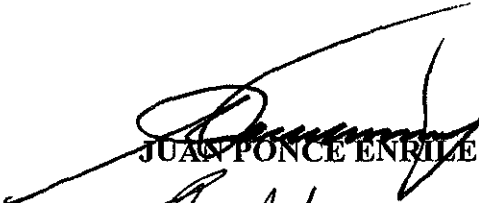
Industries will likewise bear the heavy burden of this measure. For the businessman, increased cost of power means higher cost of doing business, which, in turn, would be detrimental to government efforts of attracting investments and creating additional jobs. This might even lead to existing businesses having to close shop, thus further aggravating the country's unemployment problem. There is therefore an urgent need to lift VAT on power.

Another provision of R.A. 9337 that unduly prejudices businesses, and hence must be removed, is the 70% cap on creditable input VAT. The provision imposes an effective 3% VAT liability on businesses, regardless of their margin of profit. It does not only curtail a benefit which is supposed to be inherent under the VAT system, it restricts further the viability of doing business in the Philippines and, in the process, penalizes legitimate enterprises.

In view of the foregoing, approval of this bill is earnestly requested.



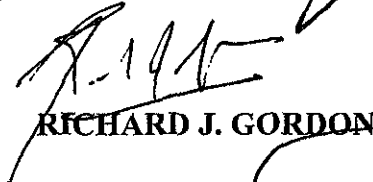
RODOLFO G. BIAZON



JUAN PONCE ENRILE



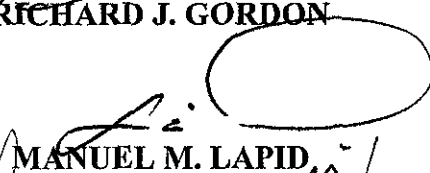
MIRIAM DEFENSOR SANTIAGO



RICHARD J. GORDON



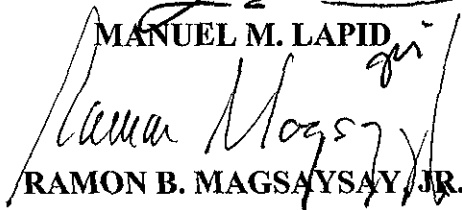
FRANKLIN M. DRILON



MANUEL M. LAPID



JINGGOY EJERCITO ESTRADA



RAMON B. MAGSAYSAY JR.



LUISA P. EJERCITO ESTRADA



RAMON REVILLA, JR.



MAR ROXAS

“(C) SALES OF ELECTRICITY BY GENERATION, TRANSMISSION, DISTRIBUTION AND SUPPLY COMPANIES;

“[(C)] D. x x x x x x

x x x x x x x x x

“[(L)] M. Sales by agricultural representatives duly registered with the Cooperative Development Authority x x x

“N. SALES BY ELECTRIC COOPERATIVES DULY REGISTERED WITH THE COOPERATIVE DEVELOPMENT AUTHORITY OR NATIONAL ELECTRIFICATION ADMINISTRATION, RELATIVE TO THE GENERATION AND DISTRIBUTION OF ELECTRICITY AS WELL AS THEIR IMPORTATION OF MACHINERIES AND EQUIPMENT, INCLUDING SPARE PARTS, WHICH SHALL BE DIRECTLY USED IN THE GENERATION AND DISTRIBUTION OF ELECTRICITY;

“[(M)] O. Gross receipts from lending activities by credit or multi-purpose cooperatives duly registered with the Cooperative Development Authority;

x x x x x x x x x.

SECTION 3. Section 110(B) of the National Internal Revenue Code of 1997, as amended by Section 8 of R.A. No. 9337, is hereby amended to read as follows:

“(B) *Excess Output or Input Tax.* – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided,* [That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT; *Provided, however,*] That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.”

SECTION 4. Section 119 of the National Internal Revenue Code of 1997, as amended by Section 15 of R.A. No. 9337, is hereby amended to read as follows:

“SEC. 119. *Tax on Franchises.* – Any provision of general or special law to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchises on radio and/or television broadcasting companies whose annual gross receipts of the preceding year do not exceed Ten million pesos (P10,000,000), subject to Section 236 of this Code, a tax of three percent (3%) and on **ELECTRIC**, gas and water utilities, a tax of two percent (2%) on the gross receipts derived from the business covered by the law granting the franchise: x x x.”

SECTION 5. Section 24 of R.A. No. 9337 is hereby amended to read as follows

“SEC. 24. *Repealing Clause.* – The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:

[(A) Section 13 of R.A. No. 6395 on the exemption from value-added tax of the National Power Corporation (NPC);]

“[(B)] A. Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies; and

“[(C)] B. All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.”

SECTION 6. *Repealing Clause.* - All laws, decrees and orders or parts thereof inconsistent herewith, are deemed repealed or modified accordingly.

SECTION 7. *Separability Clause.* – The provisions of this Act are hereby declared to be separable and, in the event any of such provisions is declared unconstitutional, the other provisions which are not affected thereby shall remain in full force and effect.

SECTION 8. *Effectivity.* – This Act shall take effect fifteen (15) days following its publication in a newspaper of general circulation in the Philippines.

Approved.